Supreme Court, U.S.
FILED
AUG 10 1992
OFFICE OF THE CLERK

No. 91-1840

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

MICHAEL J. KUHN,

Petitioner,

vs.

GLORIA KUHN,

Respondent.

Petition For Writ Of Certiorari To The Appellate Court Of Illinois, Second Judicial District

RESPONDENT'S BRIEF IN OPPOSITION

MARK W. KELLY
Counsel of Record
JOEL S. MILLER & ASSOCIATES
29 South LaSalle Street
Suite 325
Chicago, Illinois 60603-1502
(312) 606-9040
Attorneys for Respondent

Midwest Law Printing Co., Chicago 60611, (312) 321-0220

QUESTIONS PRESENTED

1. Whether a state statute may promote its legitimate interest in furnishing a means to provide for the education of children of divorced parents by allowing Courts the discretion, in some instances based upon articulated criteria, to compel said parents to contribute toward the college tuition of their children.

2. Whether Illinois Revised Statute, Chapter 40, Section 513, which advances the legitimate, substantial and compelling state interest in furnishing a means to provide for the education of children of divorced parents is violative of the divorced parents' constitutional rights of equal protection or due process.

TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	iii
OPINIONS BELOW	1
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED	1
STATEMENT OF CASE	3
ARGUMENT	4
A. SECTION 513 OF THE ILLINOIS MARRIAGE AND DISSOLUTION OF MARRIAGE ACT	4
B. IT IS WELL SETTLED THAT SECTION 513 DOES NOT VIOLATE EQUAL PROTECTION GUARANTEES	5
C. SECTION 513 ADVANCES COMPELLING STATE INTERESTS AND DOES NOT VIOLATE DUE PROCESS RIGHTS	6
CONCLUSION	11

TABLE OF AUTHORITIES

Cases PAGE

Faust v. Faust, 100 Ill. App. 3d 717, 426 N.E. 2d 994 (1981) 7
Finley v. Finley, 81 Ill. 2d 317, 410 N.E. 2d 16 (1980) 7
Greiman v. Friedman, 90 Ill. App. 3d 941, 414 N.E. 2d 77 (1980) 5
In Re Marriage of Garrison, 99 Ill. App. 3d 717 (1981) 7
In Re Marriage of Thompson, 79 Ill. App. 3d 310, 398 N.E. 2d 17 (1979) 7
In Re Marriage of Thornquist, 79 Ill. App. 3d 791 (1971) 7
In Re Marriage of Treacy, 204 Ill. App. 3d 282 (1990) 10
Krypel v. Krypel, 67 Ill. App. 3d 76, 382 N.E. 2d 1275 (1988) 5
Kujawinski v. Kujawinski, 71 Ill. 2d 563, 376 N.E. 2d 1382 (1978) 4, 5, 6, 7
Maitzen v. Maitzen, 24 Ill. App. 2d 32, 163 N.E. 2d 840 (1959) 4, 7
Rawles v. Hartman, 123 Ill. Dec. 217, 172 Ill. App. 3d 931 (2nd Dist. 1988) 9
Singer v. Singer, 70 Ill. App. 3d 472, 388 N.E. 2d 1051 (1979) 5
Tully v. Cuddy, 94 Ill. Dec. 218, 139 Ill. App. 3d 697 (1st Dist. 1985) 8

Constitutional Provisions and Statutes

U.S. Const., Amend. XIV, Sec. 1 ..... 1, 2
Ill. Rev. Stat., Ch. 40, Sec. 19 (1975) 4
Ill. Rev. Stat., Ch. 40, Sec. 513 ..... *passim*
Ill. Rev. Stat., Ch. 40, para. 102(4) 6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

MICHAEL J. KUHN,

Petitioner,

VS.

GLORIA KUHN,

Respondent.

Petition For Writ Of Certiorari To The Appellate Court Of Illinois, Second Judicial District

RESPONDENT'S BRIEF IN OPPOSITION

OPINIONS BELOW

Petitioner seeks review of an Order of the Supreme Court of Illinois entered on February 5, 1992, wherein the Court refused to consider review of an opinion filed on October 21, 1991 by the Illinois Appellate Court, Second District.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution, Amend. XIV, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State in which they reside. No

State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Illinois Revised Statutes, Chapter 40, Section 513

§513. Support for Non-minor Children and Educational Expenses. The Court may award sums of money out of the property and income of either or both parties for the support of the child or children of the parties who have attained majority and are not otherwise emancipated only when such child is mentally or physically disabled; and the application therefor may be made before or after such child has attained majority age. The Court also may make such provision for the education and maintenance of the child or children, whether of minor or majority age, out of the property and income of either or both of its parents as equity may require, whether application is made therefore before or after such child has, or children have, attained majority age. The authority under this Section to make provision for education and maintenance extends not only to periods of college education or professional or other training after graduation from high school but also to any period during which a child of the parties is still attending high school, even though he or she attained the age of 18. In making such awards, the court shall consider all relevant factors which shall appear reasonable and necessary, including:

(a) The financial resources of both parents.

(b) The standard of living the child would have enjoyed had the marriage not been dissolved.

(c) The financial resources of the child.

STATEMENT OF THE CASE

On June 22, 1968 GLORIA KUHN and MICHAEL J. KUHN were married. From their marriage, three children were born, namely, STEVEN, age 21; NANCY, age 19; and ADAM, age 12. GLORIA and MICHAEL are both single and have never remarried. The marriage of GLORIA and MICHAEL KUHN was dissolved in 1984.

One of the children born out of their union, NANCY, began to attend Northern Illinois University in the fall 1989. In May of 1990, GLORIA brought a Petition seeking college expense contributions from MICHAEL pursuant to Section 513 of the Illinois Marriage and Dissolution of Marriage Act (hereinafter "the Act") Ill. Rev. Stat. 1989, Ch. 40 par. 513. MICHAEL KUHN then filed a Petition for Declaratory relief which challenged the constitutionality of Section 513. The Trial Court upheld the constitutionality of that Section and denied MICHAEL'S Petition.

On December 6, 1990, the Court entered an Order holding each parent responsible for fifty percent (50%) of NANCY'S college expenses and ordering MICHAEL KUHN to reimburse GLORIA KUHN within ten (10) days for fifty percent (50%) of past college expenses. A Notice of Appeal from those Orders was filed. Although two subsequent Appeals were taken on collateral issues and consolidated by the Appellate Court of Illinois, only the issue regarding the constitutionality of Section 513 remains at issue in the Petition for Writ of Certiorari.

On October 21, 1991 the Illinois Appellate Court affirmed the trial court's order, apportioning the payment of college expenses and denied MICHAEL's constitutional challenges to Section 513.

On February 5, 1992 the Supreme Court of Illinois denied MICHAEL'S Petition for leave to Appeal and a Petition for Writ of Certiorari was filed with the Clerk of the Supreme Court on May 5, 1992.

ARGUMENT

The issues presented in this case were previously considered by the Illinois Supreme Court in *Kujawinski v. Kujawinski*, 17 Ill. Dec. 801, 71 Ill. 2d 563 (1978). In *Kujawinski*, the Illinois Supreme Court held that Section 513 of the Act does not violate the equal protection clauses of the Federal and Illinois Constitutions.

The Petition for Writ of Certiorari disregards the cases which hold that Section 513 does not discriminate in defiance of the equal protection clauses of the Constitutions and that the legislature has a legitimate interest in protecting all children from loss of support.

A.

SECTION 513 OF THE ILLINOIS MARRIAGE AND DISSOLUTION OF MARRIAGE ACT

Section 513 of the Act establishes the duty of a parent to provide for the education of his or her children, whether of minority or majority age. In this respect, Section 513, enacted in 1977, is a recodification of prior statutory law (Ill. Rev. Stat., Ch. 40, sec. 19 (1975), and a codification of prior common law *Maitzen v. Maitzen*, 24 Ill. App. 2d 32, 163 N.E. 2d 840 (1959). Under this statute and relevant case law, a parent is under no absolute duty to pay the educational expenses of an adult child. Such a duty is created only by a Trial Court's Order, after a Hearing on a proper Petition, considering the financial resources

of the parents and the standards of Section 513 of the Act. *Greiman v. Friedman*, 90 Ill. App. 3d 941, 414 N.E. 2d 77 (1980); *Krypel v. Krypel*, 67 Ill. App. 3d 76, 382 N.E. 2d 1275 (1988); *Singer v. Singer*, 70 Ill. App. 3d 472, 388 N.E. 2d 1051 (1979).

B.

IT IS WELL SETTLED THAT SECTION 513 DOES NOT VIOLATE EQUAL PROTECTION GUARANTEES

In 1978, in the case of *Kujawinski v. Kujawinski*, 71 Ill. 2d 563, 376 N.E. 2d 1382 (1978), the Illinois Supreme Court declared that Section 513 of the Act does not violate the equal protection guarantees of the Federal and State Constitutions. In *Kujawinski*, the father of six children in divorce litigation, brought a Petition for a Declaratory Judgment to determine the constitutionality of certain provisions of the Act which became effective on October 1, 1977. The trial court entered an Order declaring certain sections of the Act, including Section 513, unconstitutional. An Appeal was taken directly to the Supreme Court. In reviewing the case, the Illinois Supreme Court noted that under well established standards regarding the equal protection of the laws under both Federal and State Constitutions, the legislature may differentiate between persons similarly situated as long as the classification bears a reasonable relationship to a legitimate legislative purpose. The Court further noted that under these standards all statutes are presumed to be constitutional and the burden rests upon the person challenging the statute. The Court found that Section 513 does not violate any precepts of equal protection and concluded that:

> "It is certainly a legitimate legislative purpose to minimize any economic and educational disadvantages to children of divorced parents . . . We have no hesitation, therefore in concluding that it is reasonably related to that legitimate purpose for the legislature to permit the trial court, in its sound discretion, to compel divorced parents to educate their children to the same extent as might reasonably be expected of non-divorced parents. (citation omitted) Sections 503(d) and 513 of the Federal and State Constitutions."

(71 Ill. 2d 580, 376 N.E. 2d 1390)

C.

SECTION 513 ADVANCES COMPELLING STATE INTERESTS AND DOES NOT VIOLATE DUE PROCESS RIGHTS

Petitioner argues that Section 513 of the Act is not reasonably necessary to effectuate a legitimate, substantial and compelling state interest and is arbitrary and/or capricious in its application resulting in the law being invalid under the due process clauses of the first, ninth and fourteenth Amendments of the Constitution. A review of the controlling case law reveals that Appellant's due process argument does not have any merit.

Divorce, by its very nature, has a major economic and social impact on the lives of those involved. The legislature is aware of this fact and has expressly stated that the purpose of the Act is to "mitigate the potential harm to the spouses and their children caused by the process of legal dissolution for marriage" Ill. Rev. Stat., Ch. 40, par. 102(4). It is evident from the case at bar, that MICHAEL, the noncustodial parent, either out of loss of concern for his children or animosity directed towards his ex-wife cannot be relied upon to voluntarily contribute to his daughter's college expenses. This type of situation is not uncommon

in divorce. As stated in *Maitzen v. Maitzen*, 24 Ill. App. 2d 32, 38, 163 N.E. 2d 840 (1959):

> "In a normal household, parents, except as limited by compulsory education laws, direct their children as to when and how they should work and study. That is on the assumption of a normal family relationship, where parental love and moral obligation dictate what is best for the children. Under such circumstances, natural pride in the attainments of a child, such as the one here involved, would demand of parents provision for a college education, even at a sacrifice. When we turn to divorced parents, a disrupted family society cannot count on normal protection for the child, and it is here that equity takes control to mitigate the hardship that may befall children of divorced parents."

It is certainly a legitimate legislative purpose to minimize any economic and educational disadvantages to children of divorced parents. It is reasonable for the legislature to furnish the means for creating a coextensive legal obligation on divorced parents to provide for the college education of their children. Illinois Courts have had no hesitation in concluding that this is reasonably related to a legitimate legislative purpose. *Kujawinski v. Kujawinski*, 71 Ill. 2d 563, 376 N.E. 2d 1382 (1978); *Finley v. Finley*, 81 Ill. 2d 317, 410 N.E. 2d 16 (1980); *In Re Marriage of Thompson*, 79 Ill. App. 3d 310, 398 N.E. 2d 17 (1979); *Faust v. Faust*, 100 Ill. App. 3d 717, 426 N.E. 2d 694 (1981); *In Re The Marriage of Garrison*, 99 Ill. App. 3d 717 (1981); *In Re The Marriage of Thornquist*, 79 Ill. App. 3d 791 (1971). The intention of the legislature is clearly expressed, compelling and legitimate and Petitioner's contention that Section 513 is "an arbitrary capricious intrusion into the realm of fundamental parental rights" must be rejected.

The Petitioner attempts to make much of the fact that Section 513 creates a legislative classification system solely based upon marital status. However, this mechanism is not unique within the context of the Act. It is inherent within the spirit of the Act, given the issues of custody, child support and visitation, that the State must make said classifications in pursuit of its compelling interest in protecting and providing for the children of divorced parents. Section 513 of the Act is but one of many sections within the Act that specifically differentiates amongst parents based upon their marital status. [See Ill. Rev. Stat. 1989, Ch. 40, par. 601-611 (Custody); par. 607 (Visitation); par. 513 (Support)].

What Petitioner fails to acknowledge in the body of all of his arguments is that Section 513 does not mandate divorced parents to provide funds for their children's secondary education. Rather Section 513 provides that Courts exercise discretion and make determinations as to whether a parent has the ability and should under the circumstances of each particular case contribute to a child's post-secondary education. It is with these safeguards that Section 513 advances the compelling State interest without encroaching upon any fundamental rights of the Petitioner or others so situated.

The Petitioner asserts that Illinois case law is well settled that a parent's obligation to support a child ends upon that child's reaching the age of majority. The Petitioner cites to the *Tully v. Cuddy*, 94 Ill. Dec. 218, 139 Ill. App. 3d 697 (1st Dist. 1985) as authority for this proposition. In fact, the Court did no more than to apply the principals previously utilized in Illinois that *generally* once majority is reached by a child, his parents are no longer liable for his medical expenses. *Tully*, 139 Ill. App. 3d at 699.

The fact pattern presented in *Tully* simply presented to the Court no reason to forego this general rule. *Tully* involved a situation where a father was attempting to assert a claim under the Illinois Public Aid Code for medical bills incurred by his majority aged child. Thus the *Tully* opinion offers no guidance to an Illinois Court in its interpretation of the parent and majority-aged child relationship. The Court certainly did not codify any "uniform system of obligation" as suggested by the Petitioner.

The Petitioner would also attempt to persuade this Court that education is not a right in need of special protection in Illinois, and therefore Section 513 of the Act should be found unconstitutional. Section 513 is not intended, however, to provide special protection to education in Illinois, but rather to provide special protection to children of divorced parents. Education is simply one mechanism through which the Illinois legislature attempts to provide special protection to children of divorced parents in some instances. The legislature added Section 513 of the Act, which otherwise, admittedly, closely resembles the Uniform Marriage and Divorce Act (1970 Act, Amended 1971 and 1973). It is self-evident that the legislature felt strongly enough about providing for children of divorced parents and perceived that a special need existed which required legislative protection.

It should be noted that Section 513 of the Act does not "single out" divorced parents to the exclusion of all others. Taken in proper context, Section 513 has been interpreted to also include parents of illegitimate children. *Rawles v. Hartman*, 123 Ill. Dec. 217, 172 Ill. App. 3d 931 (2nd Dist. 1988). In the *Rawles* opinion, the Appellate Court of Illinois noted that the Illinois Parentage Act, Ill. Rev. Stat. 1985, Ch. 40, par. 2501 *et seq.*, provides that

Courts may apply the provisions of the Act in determining a parent's financial obligation. Other than the distinguishing fact that the parents of the majority-aged child in *Rawles* were never married, the case is virtually identical to the instant action and the father was compelled to contribute to the college expenses of his daughter.

As indicated above, Section 513 does not work to automatically discriminate against divorced parents. The clear and compelling state interest prompting Section 513 is to "furnish means to provide for the education of children of divorced parents". *In Re Marriage of Treacy*, 204 Ill. App. 3d 282 (1990). The Illinois legislature observed that protecting the interests and providing a means for the education of children of divorced parents *and other children similarly situated* was of such a compelling nature that it required special protection. Section 513 of the Act does provide this special protection and affords the Courts the ability to weigh several factors and exercise discretion in the application of the statute. The enforcement of Section 513 as intended by the legislature and applied by the trial court in the underlying action did not encroach upon any fundamental right of the Petitioner and therefore is not unconstitutional.

CONCLUSION

The compelling legislative purpose of Section 513 of the Act—to mitigate the potential harm to the children caused by the process of divorce—greatly outweighs the asserted infringements on the Petitioner's rights of due process and equal protection. Section 513 of the Act properly places the question of contribution for educational expenses of adult children within the sound discretion of the trial court and provides specific elements that are to be considered.

For the foregoing reasons, the Respondent does hereby seek that the Petition For Writ Of Certiorari to the Supreme Court of the United States be denied.

Respectfully submitted,

MARK W. KELLY
Counsel of Record
JOEL S. MILLER & ASSOCIATES
29 South LaSalle Street
Suite 325
Chicago, Illinois 60603-1502
(312) 606-9040

Attorneys for Respondent

Dated: August 10, 1992